

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY GLADNEY COOPER,

Defendant-Appellant.

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UNPUBLISHED

March 15, 2005

No. 250583

Wayne Circuit Court

LC No. 03-004617-01

Before: Wilder, P.J., and Fitzgerald and Kelly, JJ.

PER CURIAM.

Defendant was convicted by a jury of assault with intent to murder, MCL 750.83; felon in possession of a firearm, MCL 750.224(f); possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, and possession of marijuana, MCL 333.7403(2)(d). He was sentenced to prison terms of 185 to 360 months for the assault conviction, one to five years for the felon in possession conviction, and two years for the felony firearm conviction. Defendant received a suspended sentence for the marijuana conviction. He appeals as of right. We affirm.

Defendant's convictions arise from the shooting of Kali Mundy outside of an apartment building in Detroit. Mundy was shot twice in the buttocks and suffered internal injuries requiring surgery.

Defendant raises several claims of ineffective assistance of counsel. The United States and Michigan Constitutions guarantee the right to effective assistance of counsel. US Const, Am VI; Const 1963, art 1, § 20. Effective assistance of counsel is presumed, and a defendant bears a heavy burden of proving otherwise. *People v LeBlanc*, 465 Mich 575, 578; 640 NW2d 246 (2002). To establish ineffective assistance, the defendant must demonstrate that his counsel's performance fell below an objective standard of reasonableness and that counsel's representation so prejudiced the defendant that he was deprived of a fair trial. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). With respect to the prejudice aspect of the test, the defendant must demonstrate a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different, and that the attendant proceedings were fundamentally unfair and unreliable. *Id.* at 312, 326-327; *People v Rodgers*, 248 Mich App 702, 714; 645 NW2d 294 (2001).

Defendant challenges the trial court's finding after a *Ginther*<sup>1</sup> hearing that defense counsel provided effective assistance to defendant during the plea bargaining process. He contends that defense counsel failed to convey the benefits of the plea offer to him and ignored his desire to plead guilty, and that these failures led him to reject a plea offer that he now wishes to accept. However, the record shows that defendant knowingly and intelligently rejected two plea offers and chose to go to trial. The record fails to support defendant's contentions that defense counsel's representation was ineffective because he rejected a defense based on claim of self-defense and because he did not obtain a more favorable plea bargain for defendant.

Review of defendant's remaining claims of ineffective assistance is limited to mistakes apparent on the record because no *Ginther* hearing was held with regard to these claims. *People v Williams*, 223 Mich App 409, 414; 566 NW2d 649 (1997). Defendant first asserts that defense counsel's trial strategy was unsound because counsel was unsuccessful in getting testimony admitted into evidence regarding conflicts between Mundy and the defense witnesses. Defendant cannot overcome the presumption of sound trial strategy, however, because the record is insufficient to verify this allegation of ineffective assistance. *Williams, supra* at 414.

Defendant also contends that defense counsel failed to impeach Mundy's testimony that the shooting caused her to suffer a miscarriage with evidence from her medical records indicating that she was not pregnant when she was shot. The decision to call or question witnesses is presumed to be a matter of trial strategy, and the failure to do so constitutes ineffective assistance of counsel only when it deprives the defendant of a substantial defense that might have made a difference in the outcome of the trial. *People v Dixon*, 263 Mich App 393, 398; 688 NW2d 308 (2004). This Court will neither substitute its judgment for that of defense counsel regarding trial strategy matters, nor will it evaluate counsel's competence with the benefit of hindsight. *People v Matuszak*, 263 Mich App 42, 58; 687 NW2d 342 (2004). In light of the medical testimony that Mundy did not suffer any ovary or uterine injuries any failure to impeach Mundy regarding this issue was not outcome determinative.

Defendant further contends that defense counsel failed to establish that Mundy had a motive to fabricate her testimony based on defendant's assertion that she possessed a gun in violation of her probation. Because the record is insufficient to support this claim, defendant has not carried his burden and established his claim. *Williams, supra* at 414.

Defendant also maintains that defense counsel failed to move to suppress defendant's answers to questions asked before the performance of a gunshot residue test. The record is silent with regard to whether defendant was advised of his *Miranda*<sup>2</sup> rights before he was questioned. Therefore, the record is insufficient to verify this allegation of ineffective assistance of counsel. *Williams, supra* at 414.

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<sup>1</sup> *People v Ginther*, 390 Mich 436, 443-444; 212 NW2d 922 (1973).

<sup>2</sup> *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694, reh den sub nom *California v Stewart*, 385 US 890; 87 S Ct 11; 17 L Ed 2d 121 (1966).

Finally, because defendant has not established any errors prejudicing his trial, his claim of cumulative error must also fail. *People v Daoust*, 228 Mich App 1, 16; 577 NW2d 179 (1998).

Affirmed.

/s/ Kurtis T. Wilder  
/s/ E. Thomas Fitzgerald  
/s/ Kirsten Frank Kelly